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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,261	05/16/2005	Claudia Zours	ZOURS ET AL 1 PCT	4867

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EXAMINER

PETRIK, KARI KRISTEN

ART UNIT	PAPER NUMBER
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3772

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/507,261	Applicant(s) ZOURS ET AL.	
	Examiner Kari Petrik	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/23/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 2/23/2006 has been received and made of record. As requested claims 1-10 have been cancelled and new claims 11-18 have been added.

Specification

2. The amendment filed 2/23/2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:
3. The original disclosure does not have support for the interchangeable reinforcement rods having a different stiffness or length described in the last paragraph on page 4 or the preliminary amendment. Page 6 of the original specification discloses configuring the **support frame** to be stiffer or more flexible by means of interchangeable support rods having a different thickness but does not disclose that the interchangeable support rods themselves are of different stiffness. Page 5 of the original specification discloses that the support rods can have different length and/or thickness, and that the interchangeable support rods can be shortened to the correct length using simple aids such as a cutting tool. It does not give support for the interchangeable reinforcement rods having a different length.
4. On pages 5, 6, and 7 of the preliminary amendment, the "support rods" have been changed to --reinforcement rods--. This is new matter because the original disclosure is describing the support rods (3) and not the interchangeable reinforcement rods (5).

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5. Page 8 of the preliminary amendment adds “In the case of the exemplary embodiment according to Figure 2, in which the interchangeable reinforcement rods 5 that belong to the invention are not shown in the drawing...” This is new matter because neither the originally filed drawings nor specification disclose that the embodiment of new Figure 2 has interchangeable reinforcement rods.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 11-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

8. Regarding claim 11, the originally filed specification does not give support for the reinforcement rods having different stiffness and different length, as discussed in the objection to the specification above.

9. Regarding claim 12, the originally filed specification does not disclose that the interchangeable reinforcement rods consist of plastic. It states that “the support rods can consist of a suitable stiff plastic and/or of steel” (page 6) and the interchangeable support rods can consist of steel (page 8), but not that the interchangeable support rods can consist of plastic.

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10. Regarding claim 17, the originally filed specification does not disclose the embodiment of original Figure 3, wherein the support rod sections are guided in a telescoping manner, including interchangeable reinforcement rods. Note paragraph 5 above regarding the objection to the specification.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 11-14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott (US Patent 4,715,362).

13. Regarding claim 11, Scott discloses a support frame comprising a hip clasp (12) and a thoracic vertebrae clasp (16) which are connected to with one another by means of support rods (two of rods 13, Figure 2) extending parallel to the vertebral column and the distance between the hip clamp and thoracic vertebrae clamp is adjustable in that the support rods are adjustable in length (column 3, lines 24-42). Interchangeable reinforcement rods (other two of rods 13) having different thickness, stiffness, or length can be additionally inserted between the hip and thoracic vertebrae clasps.

14. Regarding claim 12, the interchangeable reinforcement rods consist or plastic and/or steel (column 3, lines 21 and 43).

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15. Regarding claim 13, accommodation pockets (17) are provided on the hip and thoracic vertebrae clasps.

16. Regarding claim 14, the support rods of the support frame are subdivided (32 and 33), overlap (Figure 3), and can be adjustably fixed (when they are not moving) to one another in the area of overlapping.

17. Regarding claim 17, the support rod sections are guided on one another in telescoping manner (Figure 4) and can be fixed to one another at different extension lengths (determined by the amount of force applied to the springs).

18. Claims 11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent DE 8907580.

19. Regarding claim 11, the '580 patent discloses a support frame comprising a hip clasp (1) and a thoracic vertebrae clasp (18) which are connected to with one another by means of support rods (9 and 7) extending parallel to the vertebral column and the distance between the hip clamp and thoracic vertebrae clamp is adjustable in that the support rods are adjustable in length (see Figure). Interchangeable reinforcement rods (13) having different thickness, stiffness, or length can be shortened using a cutting tool and can be additionally inserted between the hip and thoracic vertebrae clasps.

20. Regarding claim 14, the length-adjustable support rods are subdivided (9 and 7), overlap, and can be adjustably fixed to one another in the area of overlapping (11 and 12).

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21. Regarding claim 15, the support rod sections are connected (8) with the hip and thoracic vertebrae clasps and are provided with means of attachment (11 and 12) in the area of overlapping.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 8907580.

The patent substantially discloses the claimed invention as applied to claims 11, 14, and 15, but does not disclose that the two support rod sections are fixed to one another by means of hook and loop closures. However, a thorough reading of the specification provides no criticality to the means of attachment of the support rod sections. At the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the attachment means hook and loop closures or any other selected material, because Applicant has not disclosed that such a material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the support of German Patent DE 8907580 and Applicant's invention to perform equally well with either the material used by the '580 patent, or the claimed molded plastic

because both materials would perform the same function of providing adjustability of the rod sections. Therefore, it would have been *prima facie* obvious to modify the '058 patent to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art.

24. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scott in view of Broselid (US Patent 6,280,405).

Scott substantially discloses the claimed invention as applied to claim 11, but does not disclose an extension that reaches under the shoulder blades of the patient. Broselid teaches a support frame for relieving the vertebrae having an extension (1, see Figure 1) that reaches all the way under the shoulder blades of the patient and elongated support rods (3). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to provide the support frame of Scott having an extension and elongated support rods, as taught by Broselid, to provide additional support to the upper back.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is 571-272-8057. The examiner can normally be reached on M-Th and every other Friday, 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kari Petrik
Examiner
Art Unit 3772

KKP

ABiano
11/8/06